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Policing a Messy Federation:
The Role of the Iraqi Federal Supreme Court, 2005 - 2010

I. Introduction

This paper looks at the role of the Iraqi Federal Supreme Court in adjudicating the ground rules of Iraq's new federalism that have been introduced gradually since the US occupation began in 2003. The main argument is that from the adoption of the new Iraqi constitution in October 2005, the supreme court has changed its views on federalism quite considerably, apparently at least to some extent due to political pressure. From being a radical supporter of the rights of provincial entities in 2007, the court has increasingly expressed support of the central government as it asserts its power, sometimes in flagrant violation of the constitutional principles of radical federalism that were adopted in 2005. Equally important, however, is an evolving tendency in the opposite direction taking place entirely without reference to the supreme court at all: Increasing legislative initiatives in multiple governorates south of Baghdad that seek to implement Islamic norms and values based on local interpretations of what constitutes Islamic morals. So far, the supreme court has failed to involve itself in these developments, but the trend is on the rise and it is only a question of time before the court will be forced to look into this new phenomenon.

II. Historical Background: Iraq's Externally Imposed Federalism

Any evaluation of the way in which Iraqi authorities relate to federalism must start with an appreciation of the novelty of the idea of federalism in the Iraqi context. This point is often lost on Western observers, who tend to underestimate the shock of the majority of Iraqis when federalism was abruptly introduced in the country in the post-2003 period, starting with the Transitional Administrative Law in 2004 and carried on through the constitution adopted in 2005.

Contrary to what many Western observers think, Iraq in fact possesses a long history as a centralised polity which predates the formal establishment of the Iraqi kingdom in 1921 after the collapse of the Ottoman Empire. Even when Iraq was subdivided into three separate provinces during a brief period from the 1880s to 1914, Baghdad served as a proto-capital for the three provinces in numerous areas of administration, including the military, customs and the judiciary. Before that point, the same area from Basra to Mosul had witnessed long periods of administrative unity, not least during the Georgian mamelukes of Baghdad in the late eighteenth and early nineteenth century.[1] In line with this tradition, earlier movements in favour of separation or even autonomy within Iraq after the formal establishment of the modern state have been modest and mostly unimpressive, especially south of the Kurdish areas. The most enduring challenge to the territorial integrity of Iraq in the twentieth century was a feeble separatist movement in the port city of Basra in the 1920s; headed by a mercantile elite of Sunnis, Christians and Jews, it aspired to creating another Kuwait in the region but failed miserably due to opposition by Iraqi nationalists among Basra's youth.[2] Only the Kurdish north has demonstrated a persistent interest in territorial autonomy, and even here the pro-federal sentiment expressed today is of relatively recent, post-World War II origin with intimate links to the attempted autonomy negotiations between the post-revolutionary regimes in Baghdad and the leaders of the Barzani clan as Kurdish representatives. It is noteworthy, too, that even the Kurdish maximum demands before 2003, as articulated in the KDP draft for a new Iraqi constitution, defined oil and external defence as the exclusive prerogatives of the central government (unlike what was adopted after 2005).[3] As for sectarian demands for autonomy, whether Shiite or Sunni, they have no significant pre-history to speak of since the crystallisation of the two sects in the eleventh century AD.[4]

Only after 2003, thanks not least to heavy pressures from the US occupying power, has federalism become a principle of government with relevance to all of Iraq. As a result of massive support by the Bush administration for the two Kurdish parties as well as the lone

1 Reidar Visser, "Proto-political Conceptions of Iraq in Late Ottoman Times", International Journal of Contemporary Iraqi Studies, 2009.
2 Reidar Visser, Basra, the Failed Gulf State: Separatism and Nationalism in Southern Iraq (Berlin: Lit Verlag, 2005).
3 KDP Draft constitution for a federal and democratic Iraq, 2002.
4 Hamid al-Bayati, Shiat al-iraq bayna al-taifiyya wa al-shubhat, London, 1997; Reidar Visser, "The Two Regions of Southern Iraq", in R. Visser and Gareth Stansfield (eds.), An Iraq of Its Regions: Cornerstones of a Federal Democracy? (London: Hurst, 2007).

pro-federal party among the many Shiite factions (SCIRI/ISCI), Iraq adopted a radically decentralising constitution in 2005 that had scant resonance with the country's own governing traditions. Although the Bush administration was generally less prominent than their Democratic opposition in calling for an outright three-way soft partition of Iraq, some key officials – and in particular Ambassador Ryan Crocker – advocated and worked for devolution in ways that were quite similar to the ideas of then Senator Joe Biden.[5]

However, despite US support not even the pro-federal Iraqi elite dared to go all the way in terms of implementing their preferred visions when they drafted the constitution in the summer of 2005 with the rest of the constitutional assembly passive onlookers on the margins. For example, even though a system of power-sharing with a weak and divided executive was adopted for the first transitional period of five years (2005-2010), the default system of government as defined by the 2005 constitution (and coming into effect as the transitional period formally ended in November 2010) is one with a strong prime minister and a largely ceremonial president, thus at least theoretically making the prospect of strong centralised rule possible despite all the concessions to the provinces. As a result, Iraq was saddled with a schizophrenic system of government where ultra-federalism is one potential outcome, but where past traditions of centralised government can still be seen both in the legal and constitutional framework, and not least in actual politics.

III. The Contradictions of Federalism in the Iraqi Constitution and Current Laws

The federal system of government adopted in Iraq in October 2005, after a referendum in which few Iraqis probably knew much about what they were voting for, stands out for a number of reasons. In terms of nomenclature, the Iraqi federation looks like an asymmetrical one, with just one federal region, Kurdistan, being constitutionally recognised, and the rest of the country consisting of governorates (*muhafazat*) – sometimes defined as "governorates not organised in a [federal] region" (*muhafazat ghayr al-munazamma fi iqlim*) to emphasise the difference in status – signifying a continuity of terminology with the Baathist era. However, a key difference with other asymmetrical federations like Canada (or, arguably, the United Kingdom after devolution), is the essentially evolutionary character of the Iraqi federation. In theory, every governorate has the right to opt for future federal status following the Kurdistan pattern, and can do so either independently or through merging with other governorates, all based on local referendum initiatives called by either a tenth of the electorate in a petition or a third of the provincial council members (in other words fairly similar to the bottom-up provisions of federalism adopted in post-Franco Spain). Another interesting feature of the system adopted in 2005 is the extremely short list of powers enumerated for the central government, marking a radical break with past patterns of centralisation and leaving Baghdad, at least potentially, as one of the weakest central governments in the region and indeed in the world. The subject of this article, however, concerns not so much the relations between the central government and the existing federal region of Kurdistan, but rather those between the 15 governorates not organised in a federal region and the government in Baghdad – as they are interpreted by the Federal Supreme Court. This area is in fact a veritable legal minefield, due to the contradictory nature of the constitution of 2005 as far a the triangular relationship between the central government, the governorates and the federal region of Kurdistan is concerned.

Importantly, in one key article of the Iraqi constitution, article 115, the governorates are in fact provided with exactly the same residual powers as those held by the federal regions: Everything not listed as the exclusive powers of the central government is the prerogative of the federal regions and the governorates not organised in a region. Also, in area of shared competency, local laws trump federal laws in the case of a conflict. Seen in isolation, article 115 makes the existing governorates immensely powerful, and one could argue that in everything but the name it turns Iraq into a sixteen-state federation (Kurdistan plus the fifteen governorates not organised in a region). In this kind of perspective, the fact of territorial agglutination (from multiple governorates) constitutes almost the sole differentiating feature between the two categories of provincial unit.

However, elsewhere in the Iraqi constitutions there are contradictions. These are found above all in article 121, which goes on to out-

[5] See in particular Biden's remarks in the Iraq hearing of the Senate Foreign Relations Committee on 11 September 2007.

line descriptions of various powers held by the federal regions and the governorates. In the first place, such a description is illogical since the principle of residualism has already been adopted in article 115 and should make any further enumeration of powers entirely superfluous. More importantly, the different treatment of federal regions and governorates in article 121 seems to violate the equal status accorded to the two in 115. In the first paragraph of 121 a legislative power is explicitly specified for the federal regions (but not for the governorates). Then the two are treated on an equal basis in the fourth paragraph, which establishes a right for them to open offices at Iraqi embassies and diplomatic missions abroad. But in the fifth paragraph the right of the federal regions to organise internal security forces is specified, without any mention of the governorates. And then finally in article 122 follows a description of the powers of the governorates that seems to indicate a much weaker position than that outlined under the principle of residuality in article 115:

> *"The governorates shall be given wide administrative and financial powers enabling them to manage their affairs in accordance with the principle of administrative decentralisation, which will be organised by law."*

Not only that, the fourth paragraph of 122 goes as far as giving the parliament in Baghdad the authority to draw up a law for the election of governorate councils, the governor, "and their prerogatives"!

The problem, then, is to decide whether article 115 or articles 121–22 should be used as guiding principles for the design of the Iraqi federation. Article 115 is arguably stronger: Whereas articles 121 and 122 could be seen as superfluous and perhaps incomplete specifications of powers that flow from the adoption of the principle of residuality in article 115, any attempt at treating governorates and federal regions on a different basis in terms of their prerogatives would automatically mean a violation of 115.[6] Nonetheless, laws have already been considered and even passed by the Iraqi parliament that clearly differentiate between the two in disregard of article 115. A case in point is the draft oil law from 2007 in which "federal authorities" (but not governorates, as indicated by the discrete usage of the term *iqlimiyya*) are given contracting rights for oil and gas fields and accorded special representation on a projected oil and gas commission regardless of their actual production of oil and gas. But the mother of all contradictions in this regard is the law on the powers of the governorates, adopted in February 2008. Firstly, in its second and forty-fifth articles, this law establishes patterns of unspecified subordination of the governorate councils to institutions in Baghdad – parliament as well as a committee to be coordinated by the prime minister. Why, and how – given 115, especially – should the governorate councils be subject to the "supervision" (*riqaba*) of the national assembly in Baghdad? Surely, the Kurdistan Regional Government (KRG) is not subject to anything like that despite its analogous position according to article 115? Second, even though the committee to be chaired by the premier stipulated in article 45 does seem to have some kind of specific agenda in that it deals with multilateral and inter-governorate issues; why is this kind of quasi-arbiter imposed on the governorates by the central government without any parallel as far as the relationship between Baghdad and the KRG is concerned?

Later, the governorate powers law goes on to muddle the picture even further, since a third, new attempt at demarcation of the powers of the governorate is attempted (i.e. a new layer on top of article 115 and 121 of the constitution) – specifically in article 7 (on the powers of the governorate councils) and article 31 (on the powers of the governor). This tendency is especially clear when it comes to the specification of the inspection powers of the governor as well as the demarcation of positions in the state bureaucracy in which local authorities are accorded a role. The governor is given the right to supervise basically everything in the government except "the courts, military units, universities, colleges and institutes". This notion of a legitimate field of local government does not correspond to anything in the constitution, where for example one can find no subdivision between higher education and "other" education – as clearly intended in the provincial powers law (education generally is codified as an area of "shared" responsibility between the central government and the governorates in the constitution). Almost

[6] It should be added that article 114 also speaks of the shared powers of the central government. In the first place, the headline is ambiguous since it says "shared powers between the government and the regions [aqalim]" even though some – but not all – of the subsequent clauses also deal with ordinary governorates. Accordingly, customs, environment, health and education are explicitly shared with both federal regions and governorates (as oil is also in article 112); electricity, planning and water are "shared" but the constitution does not say between whom.

exactly the same pattern is followed with respect to the subject of hiring and firing of local staff. The governor is to nominate five persons of whom the governorate council shall select three for consideration of the relevant ministry for every high official (*mudir* or above) – again with the exception of judges, university deans and army officials.

Over and above these rather obvious attempts at limiting the field of operations of the governorates more than the general principle of residuality in article 115 of the constitution, there is also a specific demand in the provincial powers law that local laws be in conformity with the constitution *and federal laws*. This once more constitutes a fragrant violation of the principle adopted in article 115 of priority to local law in areas of concurrent competencies (as long as the local law itself is not in conflict with the constitution).

IV. Competency Disputes before the Federal Supreme Court

The role of policing this mess has been given to the Iraqi Federal Supreme Court. It should be stressed that the court itself has not been seated in accordance with the Iraqi constitution of 2005, which specifies that a special law regarding the composition of the future Federal Supreme Court is to be adopted by the Iraqi parliament with a two-thirds majority – an aspiration that so far remains unfulfilled. Nonetheless, the existing court as of March 2011 – which is a holdover from the Coalition Provisional Authority period in 2004 – has decided to work within the parameters of article 93 of the constitution as well as law number 30 on the Federal Supreme Court passed by the Iraqi parliament in (this is different from the so far elusive special law on the composition of the court and was adopted already in February 2005). It should be added that controversy relating to the court's ability to exercise these prerogatives neutrally in February 2011 expedited legislative attempts to have the required special law passed and a new court seated in accordance with the constitution.

In fulfilling this role, the supreme court – which to a considerable extent incorporates career judges from the previous regime – has received a good deal of praise from external observers. At one point in 2007 it was even hailed for its political independence, as seen not least in the decision to strike down an attempt by the dominant Shiite parties, ISCI and Daawa, to get rid of the governor of Basra from the smaller Fadila party. However, when it comes to adjudicating the relationship between the governorates and the central government, the record is certainly a less impressive one. Out of a total of 29 cases of this nature brought before the court in the 2006-2010 period, only 5 elicited a judicially substantive response with the rest being thrown out for formal reasons despite in many cases being clearly related precisely to the legal area which the court is supposed to police.

Some of the dismissed cases are fairly easy to understand since they do not involve constitutional interpretation as such. By way of example, a query from the governorate council of Baghdad regarding the non-implementation by the interior ministry of a decision by the local council is referred to a less known institution which is a remnant from the Baathist era: The so-called "consultative assembly of the state" (*majlis shura al-dawla),* which operates according to a law from 1979.[7] Altogether 7 cases of a related nature were redirected to this institution in the 2006-2010 period; they involve a high number of cases resulting from the failure to hold proper local elections at the sub-governorate level pursuant to the law on the powers of the provinces in 2008 and the concomitant legal dispute regarding the authority of the existing councils (and in particular whether they still operate under the old CPA regulation 71 from 2004 or the new law provincial powers from 2008).[8] Another sizeable batch of dismissed cases relate to interpretations of the law on the powers of the provinces from 2008 itself which supposedly is not for the court to interpret – although it is noteworthy that the court in some rulings goes on to marshal arguments in "constitutional" cases derived precisely from the law on the powers of the governorates rather than from the constitution!

More dubious are the large number of cases which clearly pertain to constitutional interpretation in the spirit, if not in the letter. By way of example, in February 2010 the governorate council of Nineveh queried the court regarding practical problems in an area defined as a "shared" competency between governorates

7 Number 33, federal, 15 September 2008.

8 See for example number 52, federal, 7 September 2009. The state consultative assembly did produce rulings that enabled local councils such as Suq al-Shuyukh to complete elections of local officials in June 2010; however as late as in September 2010, governorate councils like Nineveh continued to make queries to the Federal Supreme Court on this subject, see number 61, federal, 15 September 2010.

and central government: health. The issue at hand concerned the employment and spatial distribution of specialist doctors in the governorate. At first, the health ministry had indicated a role for the local authorities in deciding the matter; however a more recent letter from the ministry suggested it viewed the specialist doctors as a "federal asset" and had decided to relocate several of them in disregard of the advice from the governorate council – including moving them outside the governorate itself and allegedly using threats of dismissal against the doctors involved. The query from the governorate council ends up with a request to the court to establish whether the governorate council has jurisdiction in the matter, with reference to articles 114 (shared competencies) and 115 (giving residual powers to the governorates). The court dismisses the case because it does not specifically request an interpretation of the relevant clauses![9] A very similar pattern had manifested itself earlier. In December 2009, the governor of Diyala asked about the legality of a decision by the governorate council to sack a director working in the government oil sector. The governor had framed his query in relation to the law on the powers of the governorates (rather than the constitution) and as such it went unanswered; however it remained perfectly clear that the query in fact related to the importance of clarifying the grey area of concurrent powers in the constitution in oil and gas management, even though this aspect was not explicitly spelt out. [10]

Examples like these make it clear that sometimes the Iraqi Supreme Court shies away from intervening even in cases that obviously fall within the area of constitutional review. As such they are reminiscent of the behaviour of the court in another contentious issue in 2010: The de-Baathification process against a number of candidates in the parliamentary elections, and in particular the decision to exclude Salih al-Mutlak and Zafir al-Ani of Iraqiyya with reference to article 7 of the constitution (which has so far yet to be implemented). To a query from the excluded leaders about the permissibility of de-Baathifying them under a non-existent law, the court responded that the request "did not relate to constitutional interpretation of article 7 of the constitution".

Still, the most noteworthy, if almost parody-like item in this category must be the Supreme Court's response to a query from the provincial council in Basra in early 2010. The Basra council pointed out apparent inconsistencies and contradictions in past rulings by the court and went on to request a clarification of the meaning of the concept of "undertaking local legislation" (*sinn al-tashriat al-mahalliyya*) which occurred in a previous opinion of the court. To this the court replied that interpreting its own decisions is outside its jurisdiction![11]

Rather pitiful cases like these apart, there are a few rulings by the court that do enter the area of constitutional review in the relationship between Baghdad and the provinces. The first one of this kind is from July 2007, when the court, with reference to a query from parliament, concluded that the governorates do not enjoy legislative powers. The argument was based entirely on the "decentralisation" article 122 of the constitution and totally ignored the "quasi-federal" article 115 on the residual powers of the governorates. Indeed it violated article 115, since that law implicitly recognises a legislative power for the governorates by referring to the precedence of laws made by "regions or governorates not organised in a region" over federal law.[12]

However, less than two months later, the court apparently made several remarkable legal discoveries. First, in response to a similar query from parliament in September, the court first reiterated its view that no legislative power rested with the governorates; however with respect to a part of the query that asked about jurisdiction in the hiring and firing of security officials it concluded quite radically that no specific power in this area was listed for the central government; accordingly it belonged to the governorates under article 115![13] By April 2008, the court had apparently changed its mind on the legislative power of the governorates, by recognising this right after a query from the Najaf governorate council regarding the right to legislate taxation issues.[14] However, instead of introducing a definitive ruling on the principle of residuality, the court suddenly borrowed arguments from the newly passed governorate law – which in itself is in variance with article 115 in a number of ways – to justify the recognition. Two

9 Number 20, federal, 23 March 2010.
10 Number 79, federal, 21 December 2009.
11 Number 21, federal, 23 March 2010.
12 Number 13, federal, 16 July 2007.
13 Number 16, federal, 11 July 2007.
14 Number 16, federal, 21 April 2008.

months later again, yet another interpretation was issued. The court now argued that articles 115 and 122 both accorded legislative powers to the governorates, and in a circular argument added that parliament "only had the powers to legislate federal law" – hence "local laws for the governorate" (*tashriat mahaliyya*) were not included! Of course, the basic question of which spheres of government were a legitimate area of local legislation was never addressed.[15]

Thus, the brief pro-federal stint of the court largely ended. In 2008 and 2009, the court dismissed a number of queries from the governorates on procedural grounds. Importantly, it increasingly also referred to the law on the powers of the governorates, passed in February 2008, as something that supposedly established constitutionality. A key ruling was issued in July 2007, when the governor in Wasit queried whether the governorate council was subject to the control of any institutions of the central government. The court replied by quoting the governorate powers law, including the articles establishing subordination to parliament and the prime ministerial committee for multilateral questions. It also repeated the article that violates article 115 by stipulating that no local law can contradict federal laws.[16]

Especially when this is seen in the context of the series of sometimes ridiculous dismissals of cases, plus a ruling in favour of the Maliki government against a law that was passed in parliament without government involvement and that cut the administrative ties between the governorates and the municipality and public works ministries,[17] it is clear that the court in this period increasingly was supporting a centralised government that asserted its powers way beyond the restrictions of article 115. In so doing the Supreme Court has played a key role in bestowing legitimacy on the law of the powers of the governorates from 2008, despite its many contradictions and conflicts with article 115 of the constitution. But it has gone beyond this, to actively back Nuri al-Maliki in a series of cases that mean a strengthening of the premiership more broadly, including the broader implications of the ruling on cutting ties between governorates and certain government ministries since this had been an attempt by parliament to introduce a legislative act without having it formally presented through the executive. The pro-Maliki tendency can also be seen in a more recent ruling in which the so-called "independent commissions" (including the central bank and the electoral commission) were "attached" to the executive despite the existence of crystal-clear constitutional provisions for having them supervised by the national legislature.[18] It is true that in advocating centralism, the supreme court may be more in line with Iraqi history and traditions than the constitution itself; the problem is that the court is not supposed to have the job of rewriting the Iraqi constitution in a radical fashion (which is for the constitutional review committee to do).

V. Conclusion

The realities of federalism in Iraq are more than the opinions of the Federal Supreme Court. Perhaps equally important is what is being done without reference to the court. For example, the budgeting process plays a key role in creating almost caste-like division between the federal region of Kurdistan (which gets 17% of Iraqi revenue to do with as it sees fit after the deduction of costs for the foreign and defence ministries only), and the ordinary governorates (whose projects are to a large extent channelled through the Baghdad ministries).[19] In another interesting trend, numerous governorates, particularly south of Baghdad, have over the past year initiated legislation relating to Islamic morals, with the prohibition of alcohol in Basra, Najaf and Wasit, and a decision by the governorate council in Wasit to impose male guards on female members of the provincial council.[20]

This is an interesting tendency for two reasons: Firstly, at one point it will have to prompt an intra-Shiite debate about the oneness of Islamic law in a context with perhaps 9 different governorate laws on Islamic social code. How can the laws of Islam be different in

15 Number 25, federal, 23 June 2008.
16 Number 38, federal, 20 July 2009.
17 Number 43, federal, 12 July 2010.
18 Number 88, federal, issued mid January 2011.
19 It could be argued that the budget practice introduces a fourth attempt at demarcating powers between the centre, regions and governorates – on top of articles 115 and 121 of the constitution, and the provincial powers law of 2008. Despite constitutional references to "shared" areas of administration between the centre and the regions, as of early 2011 there were reportedly no Baghdad officials as such in the Kurdistan region.
20 Al-Ittihad, 14 November 2009.

Wasit and in Najaf? Second, these laws relate to the "double veto" in the Iraqi constitution, i.e. the principle that laws should not violate "the principles of democracy or the basic tenets of Islam". Recently, the court has begun issuing a string of interesting decisions in this area, so far focusing on the "democracy" side of the ledger, with radical rulings regarding the representation of small minorities like the Yazidis and the Sabaeans, as well as the principle of proportionality in the distribution of law. These rulings mean that the current election law is considered unconstitutional and will have to be fixed before the next elections in 2015. But it is only a matter of time before the court will have to deal with problems regarding the Islamic nature of laws passed. In September 2010, a cultural festival with music performances in Babel was partially cancelled for "moral" reasons, with Shiite Islamists among both proponents and opponents of the move.

The potential for serious complications regarding local judicial initiatives in grey-zone areas was exhibited during the de-Baathification upsurge prior to the 7 March 2010 parliamentary elections. At that point, the tendency manifested itself through fanciful interpretations of the accountability and justice law passed nationally in 2008 as well as the constitution. In Maysan, the head of the provincial council suggested that no Baathists could hold jobs in the state bureaucracy; in Dhi Qar a witch hunt for potential "sympathisers" of the Baath party was initiated including penalising the children of suspected pro-Baathists; in Muthanna all former Baathists with higher than *'amil* rank were permanently excluded from the local bureaucracy (and over and above this prohibited from engaging in political meetings within the borders of the governorates); in Qadisiyya an attempt was made to "disarm" suspected Baathists; in Najaf Baathists were given one day's notice to evacuate the governorate; in Karbala the provincial council (rather than the judicial authorities) were in the lead in the de-Baathification process. The legal facts of de-Baathification, of course, is that article 7 of the constitution has yet to be implemented and the sole existing legal framework is the accountability and justice law of January 2008 which basically de-Baathifies Baathists higher than *firqa* rank and gives everyone else the right to return to their jobs except in security ministries. The rest of what was seen across the governorates south of Baghdad in early 2010 was legal fiction. But importantly, since the constitution does not specify de-Baathification as an exclusive prerogative of the central government there exists a potential for local initiatives in this area if tendencies seen regarding Islamic morals so far should start to snowball in earnest.

One final interesting tendency in all of this is the comparatively scant activity of the Federal Supreme Court relating to cases involving the Kurdistan Regional Government, especially given the sometimes heated level of conflict between the central government and the KRG. In one of the few rulings of this nature, the court recently struck down a Kurdish attempt to establish a link between the 2010 census and the census for disputed areas described in article 140 of the constitution.[21]

But perhaps even more remarkable is the absence of cases involving the relationship between the KRG and the three Kurdish governorates. It is a well-known fact that there is local dissatisfaction in the KRG areas about the highly centralised character of the KRG itself; however so far serious problems in this relationship – including the recent decision by the KRG to postpone the holding of local elections until 2011 – have failed to prompt queries to the Federal Supreme Court. This could, in turn, signify the beginning of a trend in which governorates, once incorporated in a federal region, ultimately disappear from the orbit of the Federal Supreme Court. Indeed, if article 93, fourth of the constitution, is interpreted to give jurisdiction to the court in cases between the central government on the one hand, and the various administrative subunits enumerated on the other (regions, governorates, municipalities etc.), this could mean yet another area of ambiguity in the mess that is the Iraqi federalism project – and that there should be yet another reason to take the ongoing work with revising the Iraqi constitution seriously.

[21] Number 72, federal, 19 October 2010.